

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CHRISTINE F DORSEY

Claimant,

and

CASEY'S MARKETING CO

Employer.

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 15B-UI-00240

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Christine F. Dorsey, worked for Casey's Marketing Co. from April 19, 2013 through December 11, 2014 as a part-time kitchen employee at the Employer's Burlington, Iowa store. (12:34-12:55; 14:22; 20:39) On August 1, 2014, the Claimant received a written warning for failing to fill a food order, and incorrectly filling a food order according to customer complaints. (19:58-20:20) A couple months later (November 24, 2014), Ms. Dorsey licked the spatula she was using to frost cookies, and then continued to frost cookies using the same spatula. (18:22-18:53; 30:25-30:44) The Employer issued another written warning, which she signed in acknowledgement of receipt that any future food safety violations would result in her termination. (19:00-19:16; 30:33-30:50)

On December 10, 2014, two customers observed the Claimant wipe her gloved hand across her nose and subsequently wiped that same hand on her shirt. (14:43-14:56) The Claimant then told the customers that she was sick with an ear infection. (14:59-15:02; 17:00-17:25) The customers contacted the health department, which resulted in the health inspector coming by to discuss the matter. (15:48-15:59)

The Employer reviewed its surveillance tape (15:21-15:29) and noted that Ms. Dorsey did not remove her gloves after this incident; nor did she rewash her hands and get fresh gloves. (15: 05-15:13) Instead, she continued to making sandwiches. (15:16) The Employer considered the Claimant's action to be another food safety violation. (14:05; 17:56-18:06) The Claimant was sent home (16:02; 25:07), and when she returned to work the following day (December 11, 2014), the Employer terminated her. (16:07) The Claimant admitted she was sick and wiped her nose throughout her shift. (17:40-17:43; 24:50-24:58; 26:24-26:46)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The record provided unrefuted testimony that the Claimant was on notice that her job was in jeopardy after her first food safety violation that occurred in late November. Although it was her second warning, it carried the caveat that she would be fired should she violate the policy again. Her action on December 10th was another such violation. What compounded the matter was not only that she wiped her nose with her gloved hand, but that she didn't follow policy to rectify her behavior by washing her hands and changing gloves. All this failure to follow protocol occurred in front of customers, which further exacerbated the incident because it resulted in a visit from the health inspector.

The Claimant admitted her food safety violation and attempted to mitigate her actions by arguing that she was sick that day, and that the Employer knew it when she requested that she work extra hours. However, her argument lacks merits, as Ms. Dorsey could have simply declined the extra hours, or even better, called in sick that day. The Employer was justified in terminating the Claimant, as her failure to comply with company policy regarding food safety could not only harm customers, but subject the Employer to further liability. In light of the numerous customer complaints, and final warning, we conclude that the Employer has satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated February 6, 2015 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying reasons. Accordingly, she is denied until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv

DATED AND MAILED: _____

Copies to:

CHRISTINE F DORSEY
1319 N 6TH
BURLINGTON IA 52601

CASEY'S MARKETING CO
C/O TALX UCM SVCS INC
PO BOX 283
ST LOUIS MO 63166-0283